

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

Luz Mensing,

Chapter 7
Case No. 19-71469-AST

Debtor.

MEMORANDUM OF LAW

FACTS

This Chapter 7 bankruptcy case is before the Court on Motion of Ajax Mortgage Loan Trust 2018-F, Mortgage-Backed Securities, Series 2018-F, by U.S. Bank National Association, as Indenture Trustee (herein after “U.S. Bank”) by its servicing agent Gregory Funding, LLC (hereinafter “GF”), a secured creditor, for relief from the automatic stay.

On April 5, 2005, the debtor borrowed \$308,000.00 from JPMorgan Chase Bank, N.A. The indebtedness was evidenced by a note, which was secured by a mortgage on the aforesaid real property. The loan is serviced by GF. As servicing agent, GF accepts payments and maintains loan records.

The aforementioned loan was modified by an agreement dated May 1, 2008.

The aforementioned loan was further modified by an agreement dated February 1, 2012.

According to the 362 worksheet, executed by Julia Waco, a Bankruptcy Team Lead with GF, the loan is contractually due for the June 1, 2013 monthly mortgage payment and the total indebtedness is \$453,489.95.

5. According to the Property Valuation, obtained by GF on or about October 31, 2018 the subject property is valued at \$443,000.00.

POINT I

Bankruptcy Code Section 362(d) provides that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay -

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if-

(A) the debtor does not have equity in such property; . . ."

The Debtor's failure to make regular mortgage payments as they become due constitutes "cause" to lift the automatic stay. *In Re Taylor*, 151 B.R. 646 (E.D.N.Y. 1993). The Debtor is not making payments on their mortgage as required by the debt instrument. Therefore, U.S. Bank's security interest is not adequately protected, constituting "cause" to terminate the automatic stay as it pertains to U.S. Bank's lien interest.

WHEREFORE Ajax Mortgage Loan Trust 2018-F, Mortgage-Backed Securities, Series 2018-F, by U.S. Bank National Association, as Indenture Trustee by its servicing agent Gregory Funding, LLC, respectfully requests that Motion be in all respects granted and that GF be awarded such other and further relief as the Court may deem just and proper.

DATED: March 15, 2019

Yours, etc.

**SCHILLER, KNAPP, LEFKOWITZ
& HERTZEL LLP**

By: s/Lisa Milas

Lisa Milas, Esq.

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